

comparable documents filed with the FDIC, Federal Reserve Board, OCC, or OTS under the Securities Exchange Act of 1934 containing information pertaining to insider lending;

(6) A list of loans, including all overdrafts of executive officers and directors,¹ and other extensions of credit to insiders (including their related interests) outstanding at any time during the fiscal year (and which identifies those extensions granted during the year) as well as the amounts outstanding of such extensions of credit as of the date of the most recently completed Call Report or TFR (Insider Extensions List); and

(7) Management's written representation concerning the completeness of:

(a) Its records concerning insider loans and extensions of credit; and

(b) The Insider Extensions List.

b. *Procedures:*

(1) Read the foregoing information.

(2) If the institution has excluded any officers or directors from being considered executive officers for purposes of paragraph 2.a.(4) of this section, ascertain that any such exclusions have been approved by resolution of the board or the bylaws of the bank or company.

(3) Trace and agree each insider loan and other extension of credit disclosed in the documents listed in paragraphs 2.a. (2) through (5) of this section to see that it is included on the Insider Extensions List.

3. *Policies and Procedures.*

a. *Information.* Obtain the institution's written policies and procedures concerning its compliance with the Designated Insider Laws, including any written "Code of Ethics" or "Conflict of Interest" policy statements. If the institution has no written policies and procedures, obtain a narrative from management that describes the methods for complying with such laws and regulations, and includes provisions similar to those listed in paragraph A.3.b of this section.

b. *Procedures.* Ascertain that the policies and procedures include, or incorporate by reference, provisions consistent with the Designated Insider Laws for:

(1) Defining terms;

(2) Restricting loans to insiders;

(3) Maintaining records of insider loans;

(4) Requiring reports and/or disclosures by the institution and by executive officers, directors, and principal shareholders (and their related interests);

(5) Disseminating policy information;

(6) Revising policies to reflect subsequent changes in the law and regulations;

(7) Educating employees about the legal requirements and management's related policies and procedures;

(8) Prior approval of the board of directors; and

(9) Reporting insider loans to regulatory agencies on the institution's Call Report or TFR.

4. *Calculations of Lending Limits.*

a. *Information.* Obtain management's calculation of the following items as of the date of the institution's most recently completed Call Report or TFR and as of a Call Report or TFR date six or nine months earlier:

(1) The institution's unimpaired capital and surplus (the legal lending limit for all insiders);

(2) The greater of 5 percent of the institution's unimpaired capital and surplus or \$25,000; and

(3) The institution's individual lending limit (12 CFR 215.4(c)).

b. *Procedures.* Recalculate the amounts in paragraph 4.a. of this section for mathematical accuracy, and trace the amounts used in management's calculations to the most recently completed Call Report or TFR.

5. *Insider Extensions of Credit Granted.*

a. *Information.* Obtain management's written representations regarding whether the terms and creditworthiness of insider extensions of credit granted during the fiscal year are comparable to those that would have been available to unaffiliated third parties.

b. *Procedures.* Select a sample of insiders who were granted or had outstanding extensions of credit during the fiscal year from the Insider Extensions List. For each extension of credit granted during the fiscal year to each insider in the sample selected:

(1) If a credit granted during the year (aggregated with all other extensions of credit to that person and all related interests of that person) exceeds the lesser of the amounts calculated in paragraph 4.a.(2) of this section on either of the dates used in paragraph 4.a. of this section or \$500,000, read the minutes of the meetings of the board of directors and determine whether the minutes indicate that:

(a) The credit was approved in advance by the board; and

(b) The insider abstained from participating directly or indirectly in voting on the transactions;

(2) Obtain management's calculation of the institution's individual lending limit for insiders pursuant to 12 CFR 215.4(c) as of the date when the extension of credit was granted and ascertain whether the amount of the extension of credit being granted to the insider, when combined with all other extensions of credit to that insider, exceeds such limit;

(3) Based on the types of extensions of credit granted during the fiscal year in the sample selected, select a sample of three (or such smaller number that exists) for each similar type of extension of credit to persons who are not insiders or employees of the institution or its affiliates that were granted within four weeks before or after the granting of the insider extension of credit:

(a) Compare the terms of the transactions with the persons not affiliated with the institution to those with the insiders, and note in the findings any material differences in the terms favorable to the insiders compared to the terms of the transactions with persons not affiliated with the institution or its affiliates;

(b) Alternatively, if no comparable transactions with persons who are not

insiders exist within the time period specified in paragraph 5.b.(3) of this section, compare the terms of the insider transaction to approved policies delineating the interest rate and other terms and conditions in effect for similar extensions of credit to unaffiliated persons. Note in the findings any material differences in the terms favorable to the insiders compared to the terms of the approved policies for an extension of credit to persons not affiliated with the institution or its affiliates;

(4) For each extension of credit granted to each executive officer in the sample selected in paragraph 5.b. of this section, ascertain that each credit was:

(a) Preceded by submission of financial statements;

(b) Approved by, or promptly reported to, the board of directors, as appropriate; and

(c) Made subject to the written condition, as specified in the note or other evidence of indebtedness, that the extension of credit will become, at the option of the institution, due and payable at any time that the executive officer is indebted to other insured institutions in an aggregate amount greater than the executive officer would be able to borrow from the institution.

6. *Insider Extensions of Credit Outstanding.*

a. *Information.* Use the sample of insiders selected in paragraph 5.b. of this section.

b. *Procedure.* Trace and agree amounts outstanding from insiders in the sample to the supporting documents, as applicable, for the line item aggregating indebtedness of all insiders on the institution's most recently completed Call Report or TFR.

7. *Limitation on Extensions of Credit to Executive Officers.*

a. *Information.* From the sample selected in paragraph 5.b. of this section, select the executive officers who were granted extensions of credit during the year.

b. *Procedures.*

(1) For each executive officer selected, obtain management's calculation as of the two dates used in paragraph 4.a. of this section of:

(a) The aggregate amount of extensions of credit to the executive officer; and

(b) 2.5 percent of the institution's unimpaired capital and surplus.

(2) Ascertain whether, and report as an exception if, the aggregate amount of the extensions of credit to the executive officer exceeds the greater of \$25,000 or 2.5 percent of the institution's unimpaired capital and surplus, but in no event more than \$100,000. The aggregate amount should exclude the types of extensions of credit set forth in 12 CFR 215.5(c)(1) through (3).

(3) Recalculate management's computations for mathematical accuracy and trace amounts used in management's computations to the institution's most recently completed Call Report or TFR.

(4) If the credit extended is a real estate loan, obtain documentation for the credit and note whether such documentation contains representations that:

(a) The purpose of the credit is for the purchase, construction, maintenance, or improvement of the executive officer's residence;

¹ Overdrafts of an executive officer or director in an aggregate amount of \$1,000 or less need not be included on this list if management provides a written representation that policies and procedures are in effect to report as extensions of credit all overdrafts that do not meet the criteria listed in paragraph 9.a.(2) of this section concerning overdrafts in an aggregate amount of \$1,000 or less.